

# HOUSE BILL No. 1783

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-38-1-7.1; IC 35-42-2-1.

**Synopsis:** Domestic violence in the presence of child. Raises the penalty for battery from a Class A misdemeanor to a Class D felony if the offense is witnessed or heard by: (1) a minor child or stepchild; or (2) a minor child residing within the household of the victim or of the person who commits the offense. Allows a court to consider it an aggravating circumstance for sentencing purposes that a person committed a violent offense that was witnessed or heard by a: (1) minor child or stepchild; or (2) minor child residing in the household of the victim or of the person who commits the offense.

**Effective:** July 1, 1999.

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**Atterholt, Kuzman, Welch, Budak**

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January 26, 1999, read first time and referred to Committee on Courts and Criminal Code.

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First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

## HOUSE BILL No. 1783

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 35-38-1-7.1 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 7.1. (a) In determining  
3 what sentence to impose for a crime, the court shall consider:

4 (1) the risk that the person will commit another crime;

5 (2) the nature and circumstances of the crime committed;

6 (3) the person's:

7 (A) prior criminal record;

8 (B) character; and

9 (C) condition;

10 (4) whether the victim of the crime was less than twelve (12)  
11 years of age or at least sixty-five (65) years of age;

12 (5) whether the person violated a protective order issued against  
13 the person under IC 31-15 or IC 31-16 (or IC 31-1-11.5 before its  
14 repeal) or IC 34-26-2 (or IC 34-4-5.1 before its repeal); and

15 (6) any oral or written statement made by a victim of the crime.

16 (b) The court may consider the following factors as aggravating  
17 circumstances or as favoring imposing consecutive terms of



imprisonment:

- (1) The person has recently violated the conditions of any probation, parole, or pardon granted to the person.
- (2) The person has a history of criminal or delinquent activity.
- (3) The person is in need of correctional or rehabilitative treatment that can best be provided by commitment of the person to a penal facility.
- (4) Imposition of a reduced sentence or suspension of the sentence and imposition of probation would depreciate the seriousness of the crime.
- (5) The victim of the crime was less than twelve (12) years of age or at least sixty-five (65) years of age.
- (6) The victim of the crime was mentally or physically infirm.
- (7) The person committed a forcible felony while wearing a garment designed to resist the penetration of a bullet.
- (8) The person committed a sex crime listed in subsection (e) and:
  - (A) the crime created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV) and involved the sex organ of one (1) person and the mouth, anus, or sex organ of another person;
  - (B) the person had knowledge that the person was a carrier of HIV; and
  - (C) the person had received risk counseling as described in subsection (g).
- (9) The person committed an offense related to controlled substances listed in subsection (f) if:
  - (A) the offense involved:
    - (i) the delivery by any person to another person; or
    - (ii) the use by any person on another person;
  - of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact;
  - (B) the person had knowledge that the person was a carrier of the human immunodeficiency virus (HIV); and
  - (C) the person had received risk counseling as described in subsection (g).
- (10) The person committed the offense in an area of a consolidated or second class city that is designated as a public safety improvement area by the Indiana criminal justice institute under IC 36-8-19.5.
- (11) The injury to or death of the victim of the crime was the result of shaken baby syndrome (as defined in IC 16-41-40-2).



(12) Before the commission of the crime, the person administered to the victim of the crime, without the victim's knowledge, a sedating drug or a drug that had a hypnotic effect on the victim, or the person had knowledge that such a drug had been administered to the victim without the victim's knowledge.

**(13) The person committed a violent offense that was witnessed or heard by:**

**(A) a minor child or stepchild; or**

**(B) a minor child residing within the household; of the victim or of the person who commits the offense.**

(c) The court may consider the following factors as mitigating circumstances or as favoring suspending the sentence and imposing probation:

(1) The crime neither caused nor threatened serious harm to persons or property, or the person did not contemplate that it would do so.

(2) The crime was the result of circumstances unlikely to recur.

(3) The victim of the crime induced or facilitated the offense.

(4) There are substantial grounds tending to excuse or justify the crime, though failing to establish a defense.

(5) The person acted under strong provocation.

(6) The person has no history of delinquency or criminal activity, or the person has led a law-abiding life for a substantial period before commission of the crime.

(7) The person is likely to respond affirmatively to probation or short term imprisonment.

(8) The character and attitudes of the person indicate that the person is unlikely to commit another crime.

(9) The person has made or will make restitution to the victim of the crime for the injury, damage, or loss sustained.

(10) Imprisonment of the person will result in undue hardship to the person or the dependents of the person.

(11) The person was convicted of a crime involving the use of force against a person who had repeatedly inflicted physical or sexual abuse upon the convicted person and evidence shows that the convicted person suffered from the effects of battery as a result of the past course of conduct of the individual who is the victim of the crime for which the person was convicted.

(d) The criteria listed in subsections (b) and (c) do not limit the matters that the court may consider in determining the sentence.

(e) For the purposes of this article, the following crimes are considered sex crimes:



- (1) Rape (IC 35-42-4-1).
- (2) Criminal deviate conduct (IC 35-42-4-2).
- (3) Child molesting (IC 35-42-4-3).
- (4) Child seduction (IC 35-42-4-7).
- (5) Prostitution (IC 35-45-4-2).
- (6) Patronizing a prostitute (IC 35-45-4-3).
- (7) Incest (IC 35-46-1-3).
- (8) Sexual misconduct with a minor under IC 35-42-4-9(a).

(f) For the purposes of this article, the following crimes are considered offenses related to controlled substances:

- (1) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).
- (2) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
- (3) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
- (4) Dealing in a schedule V controlled substance (IC 35-48-4-4).
- (5) Possession of cocaine or a narcotic drug (IC 35-48-4-6).
- (6) Possession of a controlled substance (IC 35-48-4-7).
- (7) Dealing in paraphernalia (IC 35-48-4-8.5).
- (8) Possession of paraphernalia (IC 35-48-4-8.3).
- (9) Offenses relating to registration (IC 35-48-4-14).

(g) For the purposes of this section, a person received risk counseling if the person had been:

- (1) notified in person or in writing that tests have confirmed the presence of antibodies to the human immunodeficiency virus (HIV) in the person's blood; and
- (2) warned of the behavior that can transmit HIV.

SECTION 2. IC 35-42-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) A person who knowingly or intentionally touches another person in a rude, insolent, or angry manner commits battery, a Class B misdemeanor. However, the offense is:

- (1) a Class A misdemeanor if:
  - (A) it results in bodily injury to any other person;
  - (B) it is committed against a law enforcement officer or against a person summoned and directed by the officer while the officer is engaged in the execution of his official duty; or
  - (C) it is committed against an employee of a penal facility or a juvenile detention facility (as defined in IC 31-9-2-71) while the employee is engaged in the execution of the employee's official duty;
- (2) a Class D felony if it results in bodily injury to:
  - (A) a law enforcement officer or a person summoned and



directed by a law enforcement officer while the officer is engaged in the execution of his official duty;

(B) a person less than fourteen (14) years of age and is committed by a person at least eighteen (18) years of age;

(C) a person of any age who is mentally or physically disabled and is committed by a person having the care of the mentally or physically disabled person, whether the care is assumed voluntarily or because of a legal obligation;

(D) the other person and the person who commits the battery was previously convicted of a battery in which the victim was the other person;

(E) the other person and the person who commits the battery which was related to domestic violence (as defined in IC 31-9-2-42) was previously convicted of a battery which was related to domestic violence;

(F) an endangered adult (as defined by IC 35-46-1-1);

(G) an employee of the department of correction while the employee is engaged in the execution of the employee's official duty;

(H) an employee of a school corporation while the employee is engaged in the execution of the employee's official duty and the employee is:

(i) on school property;

(ii) within one thousand (1,000) feet of school property; or

(iii) on a school bus;

(I) a correctional professional while the correctional professional is engaged in the execution of the correctional professional's official duty;

(J) a person who is a health care provider (as defined in IC 16-18-2-163) while the health care provider is engaged in the execution of the health care provider's official duty; **or**

(K) an employee of a penal facility or a juvenile detention facility (as defined in IC 31-9-2-71) while the employee is engaged in the execution of the employee's official duty; **or**

**(L) the other person and is witnessed or heard by:**

**(i) a minor child or stepchild; or**

**(ii) a minor child residing within the household;**

**of the other person or of the person who commits the offense;**

(3) a Class C felony if it results in serious bodily injury to any other person or if it is committed by means of a deadly weapon; and

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- 1 (4) a Class B felony if it results in serious bodily injury to a  
2 person less than fourteen (14) years of age and is committed by a  
3 person at least eighteen (18) years of age.  
4 (b) For purposes of this section:  
5 (1) "law enforcement officer" includes an alcoholic beverage  
6 enforcement officer; and  
7 (2) "correctional professional" means a:  
8 (A) probation officer;  
9 (B) parole officer;  
10 (C) community corrections worker; or  
11 (D) home detention officer.

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